

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

MICHAEL GRASSI, et al.)	
)	CASE NO. 1:18-CV-2619
Plaintiffs)	
)	JUDGE PAMELA BARKER
vs.)	
)	
JOHN GRASSI, et al.)	MOTION FOR EXTENSION OF TIME
)	TO FILE A MEMORANDUM IN
Defendants)	OPPOSITION TO DEFENDANTS'
)	MOTION FOR SUMMARY JUDGMENT

Now come Plaintiffs and Third Party Defendant, Charles Rizzuti, by and through the undersigned counsel, and pursuant to Fed. R. Civ. P. 6(b)(1)(B) requests an extension of time to file a memorandum in opposition to Defendants' motion for summary judgment, filed June 17, 2019. The movants request an extension of time, through the date of this motion, to file their memorandum in opposition to Defendants' motion for summary judgment, which memorandum is being filed contemporaneously herewith.

Respectfully submitted,

/s/ Mark S. O'Brien

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MEMORANDUM IN SUPPORT

The Court previously scheduled the date for filing a memorandum in opposition to a motion for summary judgment for July 1, 2019. The scheduling of events for this matter, including, but not limited to, the July 1 summary judgment opposition date, were improperly scheduled on the undersigned counsel's scheduling system. The July 1 opposition date was not entered on the scheduling system of Plaintiffs' counsel, and as such, counsel was operating under the misguided presumption that the date for filing a memorandum in opposition to Defendants' motion for summary judgment was July 17, 2019, as provided by the local rules of this Court. The undersigned counsel asserts that this scheduling error constitutes excusable neglect on his part, as such term is utilized in Fed. R. Civ. P. 6(b)(1)(B), and not an attempt to prejudice Defendants in any way or to hinder the timely adjudication of these proceedings. Plaintiffs and Third Party Defendant have no objection to the Court providing an extension to Defendants to respond to Plaintiffs' memorandum in opposition.

Excusable neglect is an equitable concept that requires the consideration of all relevant circumstances surrounding a party's failure to comply strictly with a filing deadline. Howard v. Nationwide Property and Casualty Insurance Co., 306 Fed.Appx. 265, 266 (6th Cir. 2009). Five factors are to be balanced in determining whether neglect is excusable under Fed. R. Civ. P. 6(b)(1)(B), as follows:

1. the danger of prejudice to the nonmoving party,
2. the length of the delay and its potential impact on judicial proceedings,
3. the reason for the delay,
4. whether the delay was within the reasonable control of the moving party, and
5. whether the late-filing party acted in good faith.

Id. at 266 – 267.

The opposition to Defendants' motion for summary judgment was due 2 weeks ago, on July 1, 2019. As trial in this matter is not scheduled to occur until mid-October, 3 months from now, Plaintiffs and Third Party Defendant Rizzuti contend that Defendants will not be prejudiced by the granting of the relief requested in this motion, nor will there be any negative effect on the timely adjudication of this matter. The extension requested is brief, and no deadlines are looming. Trial, again, is 3 months away. Further, the Court can permit Defendants additional time to respond to Plaintiffs' memorandum in opposition.

Although the reason for delay, and the delay itself, were within the reasonable control of the undersigned counsel, such counsel contends that he was, and is, acting in good faith. For these reasons, Plaintiffs and Third Party Defendant Rizutti request an extension, through this date, to file the memorandum in opposition to Defendants' motion for summary judgment that is being filed contemporaneously herewith.

Respectfully submitted,

/s/ Mark S. O'Brien

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Extension of Time to File Answer to Defendants' Third Party Claim was deposited in the U.S. mail, with copy by e-mail, on this 20th day of February, 2019 for delivery to the following:

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/s/ Mark S. O'Brien

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